COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts	D.T.E. 01-20

HEARING OFFICERS' RULING ON MOTIONS FOR CONFIDENTIAL TREATMENT BY VERIZON NEW ENGLAND, INC. D/B/A VERIZON MASSACHUSETTS

December 21, 2001

I. INTRODUCTION

On May 8, 2001, Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon" or "VZ") and AT&T Communications of New England, Inc. ("AT&T" or "ATT") filed direct cases in Part A of this docket. An open discovery period was held from May 8 through August 8, 2001.

On October 29, 2001, Verizon filed a Motion for Confidential Treatment ("October 29 Motion") with the Department of Telecommunications and Energy ("Department"). The October 29 Motion seeks confidential treatment of data that Verizon provided in response to Information Requests ATT-VZ 2-41 Third Supplemental, ATT-VZ 4-3 Supplemental, ATT-VZ 4-16 Supplemental, CC-VZ 2-49 Supplemental, ATT-VZ 12-2 Supplemental, ATT-VZ 25-10 and ATT-VZ 28-3. On October 30, 2001, AT&T filed a Partial Opposition to Verizon's October 29 Motion ("October 29 Opposition") with respect to AT&T 12-2 Supplemental.

Additionally, on November 26, 2001, Verizon filed with the Department a Motion for Confidential Treatment ("November 26 Motion") of data contained in supplemental responses to ATT-VZ 4-29, ATT-VZ 14-10, ATT-VZ 14-11, ATT-VZ 14-14, ATT-VZ 14-15 and ATT-VZ 14-32. AT&T filed its opposition to Verizon's November 26 Motion ("November 26 Opposition") on November 30, 2001. Pursuant to the Department's request, on December 12, 2001, Verizon filed a supplement to its November 26 Motion ("November 26 Supplement").

AT&T then filed a response to Verizon's November 26 Supplement on December 13, 2001 ("November 26 Response"). No other party opposed Verizon's October 29 or November 26 Motions.[1]

II. MOTIONS FOR CONFIDENTIAL TREATMENT

A. Standard of Review

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states, in relevant part, as follows:

> [T]he [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D exempts the Department, in certain narrowly defined circumstances, from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) ("specifically or by necessary implication exempted from disclosure by statute").

G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, confidential, competitively sensitive or other proprietary information." Second, the party seeking protection must overcome the statutory presumption that all such information is public information by "proving" the need for its nondisclosure. Third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need. G.L. c. 25, § 5D. Compliance with a Departmental request for

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[1] This ruling addresses only Verizon's October 29 and November 26 Motions. In the course of this proceeding, Verizon has submitted five Motions for Confidential Treatment, AT&T has submitted seven Motions for Protective Treatment of Confidential Information, and the CLEC Coalition has filed one confidential treatment motion on behalf of Covad Communications Company. The remaining motions for confidential treatment, all unopposed, will be addressed at a later date.

information can be enforced by summons and subpoena issued under G.L. c. 25, § 5A, G.L. c. 268, § 6, G.L. c. 30A, § 12, 220 C.M.R. § 1.10(9), and 220 C.M.R. § 1.15(3).

Previous Department applications of the standard set forth in G.L. c. 25, § 5D are in accord with the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113, at 4, Hearing Officer Ruling (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party's Limited Liability Company Agreement, notwithstanding requesting party's assertion that such terms were competitively sensitive); see also Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996) (Department will grant exemption for electricity contract prices, but "[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of the customer"); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

The Department reminds all parties that it has not and will not automatically grant requests for protective treatment. A party's willingness to enter into a nondisclosure agreement does not resolve the question of whether the response should be granted protective treatment. Boston Edison Company, D.T.E. 97-95, Interlocutory Order on (1) Motion for Order on Burden of Proof, (2) Proposed Nondisclosure Agreement, and (3) Requests for Protective Treatment (July 2, 1998).

In determining whether certain information qualifies as a "trade secret," Massachusetts courts have considered the following: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the employer to guard the secrecy of the information; (4) the value of the information to the employer and its competitors; (5) the amount of effort or money expended by the employer in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. Jet Spray Cooler, Inc. v. Crampton, 361 Mass. 835, 840 (1972) (citing Restatement of Torts, § 757, cmt. b). The burden to demonstrate that certain information meets this test is on the party seeking to have the information protected from public disclosure. G.L. c. 25, § 5D.

B. POSITIONS OF THE PARTIES

1. October 29 Motion

a. Verizon

Verizon contends that the data contained in its response to ATT-VZ 2-41 Third Supplemental, ATT-VZ 4-3 Supplemental, ATT-VZ 4-16 Supplemental, CC-VZ 2-49 Supplemental, ATT-VZ 12-2 Supplemental, ATT-VZ 25-10 and ATT-VZ 28-3 qualify as

"trade secret" or "confidential, competitively sensitive, proprietary information" under Massachusetts law and are entitled to protection from public disclosure in this proceeding (October 29 Motion at 1). Verizon maintains that the information for which it requests protective treatment is not publicly available, is not shared with non-Verizon employees for their personal use, and is not considered public information (id. at 5). Additionally, Verizon states that any dissemination of this information to non-Verizon employees, such as contracted service providers, is labeled as proprietary and that non-Verizon employees working for Verizon who may have access to this information are under a nondisclosure obligation (id.).

Furthermore, Verizon argues that the benefits of nondisclosure, and associated evidence of harm to Verizon (and its vendors), outweigh the benefit of public disclosure in this instance (id.). Verizon contends that disclosure of the competitively sensitive material will undermine Verizon's ability to compete with other providers of like services that are not subject to equal public scrutiny (id.). Additionally, Verizon notes that both the Department and the telecommunications industry have recognized such information to be confidential and appropriately subject to protection by order and the execution of reasonable nondisclosure agreements, and argues that nothing has changed in terms of law or circumstance that warrants an abandonment of that protection (id.). Finally, in balancing the public's "right to know" against the public interest in an effectively functioning competitive marketplace, Verizon urges the Department to continue to protect information that, if made public, would likely create a competitive disadvantage for the party complying with discovery requests (id. at 5).

Turning to the individual Information Request responses for which protective treatment is sought, Verizon states that the attachments to the response to ATT-VZ 4-3 Supplemental identify recent vendor quotes supporting investments and inputs to Part C of Verizon's Cost Study. Additionally, the attachment to its response to ATT-VZ 2-41 Third Supplemental identifies competitively sensitive material provided by third-party vendors, including certain manufacturers' specifications that are copyrighted and licensed by third-party vendors who had provided the material to Verizon under the condition that it be treated as proprietary and confidential (id. at 2-3). Verizon maintains that the attachments to its responses to ATT-VZ 2-41 Third Supplemental and ATT-VZ 4-3 Supplemental are competitively sensitive material between Verizon and third party vendors; that Verizon regularly seeks to prevent dissemination of this information in the ordinary course of its business; and that disclosure of such information would place both Verizon and its vendors at a competitive disadvantage (id.). Moreover, Verizon asserts that the public disclosure of the material in the attachment to its response to ATT-VZ 2-41 Third Supplemental would compromise the integrity of the agreements between Verizon and its vendors (id. at 3).

Verizon further contends that disclosure of the material contained in the attachments to its responses to ATT-VZ 4-16 Supplemental, CC-VZ 2-49 Supplemental, ATT-VZ 12-2 Supplemental, ATT-VZ 25-10, and ATT- VZ 28-3 could be of value to other providers in developing competing market and business strategies and thus create a competitive disadvantage for Verizon (October 29 Motion at 3-4). More specifically, Verizon argues that, if made

public, the attachments to the response to ATT-VZ 4-16 Supplemental, which identify data from the Detailed Continuing Property Record ("DCPR") used in the development of the Engineer, Furnish & Install ("EF&I") factors, could also create a competitive disadvantage for the relevant resellers (id. at 3).

With regard to the attachment to the response to CC-VZ 2-49 Supplemental, which provides Verizon's forecasted growth rate for access lines and CCS trends, Verizon asserts that competitors could find such service-specific information useful in establishing sales strategies that target particular market segments (id. at 3-4). Similarly, Verizon states that vendor-related pricing information that could be of value to providers in developing competing market strategies – namely, right-to-use ("RTU") fees for digital switching – is identified in the attachment to the response to ATT-VZ 12-2 Supplemental (id. at 4).

Concerning ATT-VZ 25-10, Verizon states that the attachment to that response identifies cost results for proceedings in Delaware and New Jersey and was accepted under protective seal in these jurisdictions, and Verizon is seeking to maintain the proprietary treatment (id. at 4). Verizon contends that the information for Delaware and New Jersey is not published elsewhere or publicly available, and that disclosure of the sensitive material will undermine Verizon's ability to seek to protect information that has been accepted as proprietary in another jurisdiction (id.).

Finally, Verizon argues that the attachments to the response to ATT-VZ 28-3 identify the deployment of OC 48 fiber rings and details the A to Z locations of OC 48 facilities, and, like Verizon, other competitive providers do not disclose such state-specific information in the ordinary course of business (id). With the exception of the attachment to the response to AT&T-VZ 25-10, Verizon notes that it is producing the attachments for which it seeks confidential treatment pursuant to a protective agreement (id. at 2-4).

b. AT&T

AT&T objects, in part, to Verizon's request to treat the data contained in ATT-VZ 12-2 as confidential. Specifically, AT&T asserts that Verizon's October 29 Motion might justify confidential treatment for the specific project names and amounts listed in the spreadsheet attached to ATT-VZ 12-2; however, AT&T further states that there is no basis for treating as confidential the column and section headings, the amount of the sub-total of specified projects, the amount and footnote explanation of the adjustment, and the resulting net total (October 29 Opposition at 2). AT&T notes that Verizon has previously placed totals of RTU expenditures without specific project details upon the public record, and that Verizon offers no justification for its refusal to do so in this instance (id.). Accordingly, if the Department were to permit Verizon's supplemental response to ATT-VZ 12-2 to be treated as confidential, AT&T urges the Department to direct Verizon to provide a redacted version of the supplemental response displaying the non-confidential portions of the spreadsheet attached to that response (id. at 1).

2. November 26 Motion

a. Verizon

Verizon contends that the data contained in its supplemental responses to ATT-VZ 4-29, ATT-VZ 14-10, ATT-VZ 14-11, ATT-VZ 14-14, ATT-VZ 14-15 and ATT-VZ 14-32 qualify as "trade secret" or "confidential, competitively sensitive, proprietary information" under Massachusetts law and are entitled to protection from public disclosure in this proceeding (November 26 Motion at 1). Verizon asserts that the information in the attachments to each of the responses is not readily available to competitors, would be of value to them in developing competitive business strategies, and its public disclosure would create competitive disadvantage (id. at 2-3). Verizon further argues that the benefits of nondisclosure, and associated evidence of harm to Verizon (and its vendors), outweigh the benefit of public disclosure in this instance, and that disclosure will undermine Verizon's ability to compete with other providers of like services that are not subject to equal public scrutiny (id. at 3).

Regarding its response to ATT-VZ 4-29, Verizon states that the attachment, which identifies the access line forecast for Massachusetts for 2001 through 2006, is highly sensitive because it represents the supply and demand for Verizon's access lines, is used by Verizon's internal marketing and business organizations, and contains key components of Verizon's competitive strategies and assumptions over the next five years (November 26 Motion at 3; November 26 Supplement at 3-4). Verizon claims that if this information is revealed, it would place Verizon at a competitive disadvantage because competitors will be able to determine characteristics of Verizon's market segments, network plans, and vendor relationships, and will have the ability to use this information to develop competing business strategies and to conform their investment and marketing strategies (November 26 Motion at 3-4; November 26 Supplement at 3-4). Verizon also notes that the disaggregated access line forecasts are closely held within the company and are not shared with outside consultants (November 26 Supplement at 4 n.3).

Citing Boston Gas Company, D.T.E. 88-67 (Phase II) for support, Verizon requests that the information contained in ATT-VZ 4-29 Second Supplement be released only to the Department, the Attorney General, and the Attorneys for Verizon competitors (November 26 Motion at 4). Verizon argues that the material in ATT-VZ 4-29 Second Supplement is qualitatively different from other information for which confidential treatment is requested because it contains details about the Company's Business Plan forecast for access lines, which, if disclosed to CLEC personnel or consultants, would cause competitive harm to Verizon (November 26 Supplement at 4-5). Additionally, Verizon maintains that limited disclosure is appropriate because, once there is an understanding of Verizon's planning assumptions, consideration of that information by the CLEC personnel or consultants when making other decisions cannot be eliminated (id. at 5). Lastly, Verizon states that the forecast contained in ATT-VZ 4-29 Second Supplement was not used to develop its cost model, and thus, limiting disclosure would have little or no impact on AT&T's ability to participate in this case (id. at 6).

Noting that limited disclosure is not unprecedented, Verizon asks the Department, in ruling on its request for limited disclosure, to weigh the competitive harm to Verizon against the minimal injury to AT&T (id. at 5 n.6).

Turning to the supplemental response to ATT-VZ 14-10, Verizon argues that this response includes detailed information about the location, configuration and cost of investments for its network and, if publicly available, would allow competitors to gain insights into Verizon's investment decisions, marketing strategies and cost advantages/disadvantages (November 26 Supplement at 2). Verizon notes that the information includes prices from third party vendors who would be harmed if the prices charged to Verizon were revealed (id.).

Finally, Verizon states that the maps, schematic drawings and associated records provided in response to ATT-VZ 14-32 divulge competitively sensitive information about the specific locations and capacity of Verizon's feeder and distribution routes. Verizon argues that, if made publicly available, these records would disclose Verizon's capability to serve new and existing customers and its planning or marketing strategies for locations where it believes these facilities are needed; and would permit competitors to develop marketing strategies based on the knowledge of the location and capacity of Verizon's facilities (id. at 2-3). Verizon also cites public safety concerns against making this information available publicly (id. at 3).

b. AT&T

AT&T objects to Verizon's request to limit disclosure of the attachment to the Second Supplemental response to ATT-VZ 4-29. First, AT&T contends that the request is an attempt to prevent the CLECs from fully evaluating Verizon's cost studies and providing responsive testimony. AT&T asserts that if CLEC experts are not allowed to review the supplemented response to ATT-VZ 4-29, Verizon will not be able to claim it has met is burden to prove the reasonableness of its cost studies (November 26 Opposition at 3-4). Moreover, AT&T maintains that the precedent cited by Verizon is irrelevant because it dealt with an issue unrelated to the one at hand (id. at 4).[2]

Second, AT&T argues that, given the fact that CLEC experts and witnesses have signed protective agreements that prevent them from using the confidential information provided in this docket for any purposes other than participation in this proceeding, Verizon's request to limit disclosure of the attachment to the ATT-VZ 4-29 Second Supplemental response is unnecessary, because the protective agreement adequately addresses Verizon's purported concerns (id. at 1-2, 5). AT&T further notes that Verizon has not explained why it cannot provide the requested information pursuant to the terms of the confidentiality agreements, nor

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[2] AT&T asserts that the precedent Verizon cites does not support its case here because the issue in D.T.E. 88-67 (Phase II) involved adding information to the record of a docket after the record was closed (November 26 Opposition at 4).

explained why the requested information is any different from confidential information routinely provided by CLECs to Verizon, or vice versa (November 26 Opposition at 4-5). AT&T also notes that Verizon raised no objection to providing or limiting access to the requested information when AT&T moved to compel a response to ATT-VZ 4-29 (id. at 5). In fact, AT&T notes, Verizon agreed to provide the response during the recent procedural scheduling conference (id.).[3] AT&T insists that Verizon's effort to keep CLEC experts and witnesses from viewing the response is an attempt to disrupt this proceeding (id. at 5-6).

Third, AT&T maintains that Verizon has failed to meet its burden of proving that the attachment to its supplemental response to ATT-VZ 4-29 is entitled to any protective treatment (id. at 6). AT&T maintains that Verizon's November 26 Motion does not contain a single assertion that it limits the dissemination of the requesting information either within or outside of Verizon, or describe any measures taken by Verizon to guard the secrecy of the information (id. at 7). AT&T argues that if Verizon has discussed demand forecasts with financial analysts or others outside the company, then this information would not be entitled to any level of protection (id.).

Lastly, AT&T responds to Verizon's claims in the November 26 Supplement, stating that: (1) Verizon has been ordered to produce a response to ATT-VZ 4-29 and is now attempting to seek reconsideration of the Department's Order to produce the requested documents; (2) that Verizon's assertion of harm is without foundation because none of the individuals who would review the data are involved in planning AT&T's marketing strategies; and (3) that Verizon has in no way distinguished the data (id. at 1-2). Accordingly, AT&T urges the Department to deny Verizon's November 26 Motion with respect to ATT-VZ 4-29 Second Supplement, or, in the alternative, to strike all portions of Verizon's cost studies which

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[3] In its response to AT&T's September 7, 2001 Motion to Compel, Verizon agreed to supplement seven of the Information Request responses at issue, including ATT-VZ 4-29. Verizon stated that "ATT-VZ 4-29 requested Verizon MA to produce all alternative line forecasts or trends used by Verizon MA's marketing, engineering, or strategic planning organizations. Verizon MA will supplement its response to provide additional information if it exists" (Reply of Verizon Massachusetts to AT&T Motion to Compel at 7 (September 20, 2001)). In its October 18, 2001 Interlocutory Order, the Department granted AT&T's motion to compel with regard to the Information Request responses Verizon had already agreed to supplement, "to ensure Verizon's supplemental answers are fully responsive and avoid any further motions to compel" (October 18 Interlocutory Order at 26). AT&T subsequently contended at a November 15, 2001, procedural conference that Verizon's supplement to 4-29 was not fully responsive and not in compliance with the Department's Interlocutory Order, and needed additional supplementation (Tr at 323-324). Verizon agreed to further supplement the response by November 26, 2001 with a "full explanation" (id.)

purport to rely on any forecasts of access line numbers or demand (November 26 Opposition at 7-8; November 26 Response at 2).

C. ANALYSIS AND FINDINGS

1. October 29 Motion

Based upon the Hearing Officers' review of the responses at issue, the Hearing Officers find as follows. First, materials provided to Verizon by third party vendors, such as price quotes, and copyrighted and licensed manufacturer's specifications, are confidential, proprietary materials that should not be placed in the public docket. Given that some of these materials, namely materials in the attachment to the response to ATT-VZ 2-41 Third Supplemental, were provided to Verizon on the condition that these materials be treated as proprietary, we agree that public disclosure would compromise the integrity of Verizon's agreements with its vendors. Moreover, we agree that public dissemination of this material would place Verizon and its vendors at a competitive disadvantage. Accordingly, the Hearing Officers determine that Verizon has satisfied the three-part standard outlined above and hereby grant Verizon's motion for protective treatment with respect to AT&T 2-41 Third Supplemental and ATT-VZ 4-3 Supplemental.

Likewise, we grant protective status to that portion of the attachment to the supplemental response to ATT-VZ 12-2 which reveals vendor-related pricing information. Additionally, we find that specific project names and their respective estimated expenditures are competitively sensitive and, if disclosed to the public, could create a competitive disadvantage for Verizon, and grant protective status to that material. However, we agree with AT&T that column and section headings, the amount of the sub-total of specified projects as well as the total estimate, and the amount and explanation for the adjustment should not be afforded protective status. Because Verizon has previously placed RTU expenditure material upon the public record in this docket,[4] it would be inappropriate to afford protective status to similar material in this instance without specific proof, which Verizon has not provided, as to the need to do so.

Second, the Hearing Officers conclude that Verizon's internal engineering information, such as the location and characteristics of Verizon's SONET rings, which are detailed in the supplemental response to ATT-VZ 28-3, is competitively sensitive, proprietary material. We agree that this is the type of information that carriers typically do not disclose to the public. Therefore, we grant protective status to this response.

Third, we find that Verizon's internal growth forecasts are confidential, proprietary material which warrant protective treatment. The response to CC-VZ 2-49 contains Verizon's

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4 See Verizon Cost Study, Part G-9 - Right to Use Factor Study, Workpaper Page 1 of 3, Line 1 (showing "Annual RTU/Software Investments" for 1999 through 2002).

forecasted growth for access lines and CCS trends, and, if made public, would assist competitors in developing competing marketing strategies. Accordingly, protective treatment is granted to this response.

Fourth, the Hearing Officers find that public disclosure of materials granted proprietary status in other jurisdictions would not only undermine Verizon's ability to protect materials that have been accepted as proprietary in other jurisdictions, but would also undermine the authority of the regulatory agency granting protective status of the materials. Accordingly, we grant protected status only to that portion of the response to ATT-VZ 25-10 that was granted protected status in New Jersey and Delaware. Verizon is directed to provide a redacted copy of this response for the public record.

Finally, the Hearing Officers grant protective status to the attachment to ATT-VZ 4-16 Supplemental. This response identifies data in the DCPR used to develop EF&I factors, including transaction records with vendors, which if publicly available, could result in a competitive disadvantage for Verizon.

2. November 26 Motion

Based upon our review of the responses at issue, the Hearing Officers find as follows. We agree that details regarding the location, configuration and cost of investments for Verizon's network are confidential, proprietary information and, if publicly available, could result in competitive harm by allowing competitors to gain insights into Verizon's investment decisions and costing information. Furthermore, as stated above, vendor pricing information should be protected from public disclosure. Hence, we grant protected status to the data contained in the supplemental response to ATT-VZ 14-10.[5]

Next, we grant protected status to the supplemental response to ATT-VZ 14-32. This response contains detailed information regarding Verizon's feeder and distribution network, and we agree that public disclosure of this information would result in a competitive disadvantage for Verizon by providing insight into Verizon's ability to serve new and existing customers and its planning or marketing strategies with respect to expansion of its facilities.

Finally, we agree that the information contained in ATT-VZ 4-29 is confidential, proprietary information that merits protective treatment from public disclosure. ATT-VZ 4-29 contains detailed disaggregated information regarding Verizon's access lines which could result in competitive harm if publicly disclosed. However, we find that Verizon has not met its burden to prove the need for the limited disclosure it requests for this response. Even though the type of limited disclosure Verizon requests may not be unprecedented, it is not a common

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[5] The responses to ATT-VZ 14-11, ATT-VZ 14-14 and ATT-VZ 14-15 refer to the response to ATT-VZ 14-10 and are granted the same protected status.

Department practice. As AT&T noted, the situation in D.T.E. 88-67 (Phase II) is not analogous to the confidential treatment issue here. Further, the transcript from a November 14, 2000 procedural conference in D.T.E. 00-68 that Verizon attached, but did not refer to in, its November 26 Supplement is also not relevant, as it involves confidential information of a limited intervenor, whereas Verizon here seeks heightened protection of its own confidential forecasts.

Although Verizon argues that the data contained in the ATT-VZ 4-29 response is "qualitatively different" from other data provided, we find that Verizon has not sufficiently distinguished the information in the response from other confidential, proprietary materials provided in this docket or sufficiently explained why it cannot provide the response pursuant to the terms of confidentiality agreements. Verizon contends that the attachment to ATT-VZ 4-29 should not be disclosed to anyone but the Department, Attorney General and attorneys for other parties, because release to CLEC competitors of the information containing details of the Company's Business Plan forecast for access lines would cause Verizon "significant competitive harm" (November 26 Supplement at 4-5). Verizon uses the same argument to support its request for confidential treatment of all of the Information Request responses at issue in this ruling; yet Verizon does not request that any of the other responses be kept from disclosure to competitors' witnesses, who have signed nondisclosure agreements precisely because of the data's competitive sensitivity. The Department considers claims of competitive harm, where supported by evidence, to be grounds for protecting a party's proprietary information from public disclosure, but such a showing is not ordinarily grounds for preventing witnesses from viewing and analyzing the information.

Verizon's argument – that once the information is revealed to CLEC witnesses, they cannot "unlearn" it, and thus the possibility of their incorporating that information in future decision-making cannot be foreclosed – is unpersuasive, for the same could be argued for any confidential information revealed to any witness under a nondisclosure agreement. Upholding an argument of this nature would prevent opposing witnesses from analyzing any responses or testimony deemed "too proprietary" by the proponent of that information. We therefore agree with AT&T that the existing confidentiality agreement adequately protects Verizon's information.

Verizon also argues that the access line forecast was not used to develop its cost model, and therefore, limiting its disclosure would not affect AT&T's ability to participate in the case. However, we decline to consider this "relevance" argument at this point in the proceeding. As noted above, the Department has ordered Verizon, and Verizon has on numerous occasions agreed, to provide a "full response" to ATT-VZ 4-29. Not until it filed its Second Supplemental response did Verizon indicate it planned to limit access to the response. The issue of producing full responses to Information Requests has been addressed in previous rulings and orders in this docket, and we will not revisit it here.

In conclusion, we find that Verizon has not overcome the statutory presumption that information filed by a party in the course of a Department proceeding is public information by "proving" pursuant to G.L. c. 25, § 5D the need for nondisclosure to witnesses of the access line forecasts in the attachment to the ATT-VZ 4-29 Second Supplemental response. Accordingly, we do not reach AT&T's alternative motion to strike all portions of Verizon's cost studies which purport to rely on any forecasts of access line numbers or demand.

III. RULING

Accordingly, after due consideration, the Hearing Officers find:

(1) That the October 29, 2001 Motion for Protective Treatment of Verizon New England, Inc. d/b/a Verizon Massachusetts is granted in part, and denied, in part, as noted herein; and,

(2) That the November 26, 2001 Motion for Protective Treatment of Verizon New England, Inc. d/b/a Verizon Massachusetts is granted, in part, and denied, in part, as noted herein.

Under the provision of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by December 27, 2001, at 5:00 p.m. A copy of this Ruling must accompany any appeal. Any response to any appeal must be filed by January 2, 2002, at 5:00 p.m.

Marcella Hickey
Hearing Officer

Tina W. Chin
Hearing Officer

Date: December 21, 2001